

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 389 19 93Bill H _____ S 100 Original bill & history CH. Committee on State Admin.Hearing Date(s) Mar 11 ☒ CMar 18 ☒ C_____ ☐ C_____ ☐ CDate Out Mar 15 ☒ CS. Committee on State Admin.Hearing Date(s) Jan 13 ☒ CFeb 05 ☒ C_____ ☐ C_____ ☐ CFeb 08 ☒ CDid this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

2/19 SIGNED BY SPEAKER
 2/19 TRANSMITTED TO GOVERNOR
 2/23 SIGNED BY GOVERNOR
 CHAPTER NUMBER 72
 EFFECTIVE DATE: 10/01/93

SB 100 INTRODUCED BY FORRESTER, ET AL.
 CLARIFY DESIGNATED SMOKING AREAS
 BY REQUEST OF DEPARTMENT OF ADMINISTRATION

1/08	INTRODUCED		
1/08	REFERRED TO STATE ADMINISTRATION		
1/08	FIRST READING		
1/13	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	31	17
2/10	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO STATE ADMINISTRATION		
2/23	FIRST READING		
3/11	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	69	22
3/30	3RD READING CONCURRED	81	19
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	47	0
4/03	3RD READING AMENDMENTS CONCURRED	46	1
4/08	SIGNED BY PRESIDENT		
4/13	SIGNED BY SPEAKER		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 389		
	EFFECTIVE DATE: 10/01/93		

SB 101 INTRODUCED BY JACOBSON
 CLARIFY MASKING OF INCOME TAX DATA FOR GOVERNMENT USE
 BY REQUEST OF LEGISLATIVE FINANCE COMMITTEE

1/08	INTRODUCED		
1/08	REFERRED TO FINANCE & CLAIMS		
1/15	HEARING		
1/15	COMMITTEE REPORT—BILL PASSED		
1/16	2ND READING PASSED	47	0
1/18	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/19	FIRST READING		
1/19	REFERRED TO TAXATION		
1/22	HEARING		
1/23	COMMITTEE REPORT—BILL CONCURRED		
1/26	2ND READING CONCURRED	95	2
1/28	3RD READING CONCURRED	94	4
	RETURNED TO SENATE		
2/03	SIGNED BY PRESIDENT		
2/05	SIGNED BY SPEAKER		
2/05	TRANSMITTED TO GOVERNOR		
2/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 20		
	EFFECTIVE DATE: 10/01/93		

EXECUTIVE ACTION ON SB 95

Motion: Sen. Pipinich moved SB 95 be tabled.

Discussion: None.

Vote: Motion to table SB 95 carried 8 to 1 with Sen. Burnett opposing.

HEARING ON SB 100

Opening Statement by Sponsor:

Sen. Gary Forrester, Senate District 49, presented SB 100, which is an act defining the term "designated smoking area" in state buildings in the State of Montana. He is carrying the bill for the Department of Administration. He stated second-hand smoke bears new significance as of the EPA report this week. Second-hand smoke has the same classification as asbestos-laden air.

Proponents' Testimony:

Debra Fulton, Administrator of General Services, gave written testimony (EXHIBIT #2, EXHIBIT #3, EXHIBIT #4).

Opponents' Testimony:

Jerome Anderson, attorney from Helena, represented the Tobacco Institute, an organization supported by the Tobacco Industry that makes appearances before Congress, State Legislatures, local and political entities with respect to legislation and regulations made to the tobacco industry. He appeared in opposition to SB 100 in the present form and asked consideration to customers in the industry who want an accommodation with regard to their choice and the use of the product which provides revenue to people in the state of Montana. Tobacco products provide revenue that has constructed and maintained the buildings that are on the campus in Helena and the university systems across the state. The present statute prohibits smoking in general office space, auditoriums, classrooms and conference rooms, elevators, corridors, lobbies, restrooms and stairways except as provided in the subsection. It prohibits medical care facilities, libraries, or hazardous areas. It prohibits smoking in almost all public buildings across the state. He said if this bill passes a single agency head can make the decision whether or not there will be an accommodation made for people who use a tobacco product. At the present time, the statute says that an agency shall establish at least one designated smoking area in each building except in the areas listed in the subsection and the areas that are suitable for that particular purpose. The statute as proposed by the Department of Administration says the Legislature may establish designed smoking areas. This building and other buildings in the

complex that have sealed windows have inadequate ventilation systems. The other things that create air pollution also are not addressed by the Department of Administration or by the state in any way. He referred to things such as formaldehyde from furniture and wall-boards, carbon monoxide, and nitrogen dioxide from heating systems, ozone from office copiers, cotton fibers and fiberglass fragments that are in the air from carpets and furniture. These substances are allowed to accumulate because of inadequate or inadequately maintained ventilation systems which is the predominate cause for the "sick buildings syndrome." If the Department of Administration is sincere about trying to protect the people in the public buildings from air pollution, they should look at a complete ventilation system and the proper maintenance of those systems. He is asking for a continuation of the accommodation provided under the existing statute. R.J. Reynolds has a brochure which is a technical document relating to the development of a smoking lounge. In this document, he explains, there are three ways of taking care of accommodation for smokers and nonsmokers. 1) Trying to work out an arrangement with employees of the workplace, 2) a facility within the building that can be a designated smoking area, 3) a smoking lounge.

John Delano, represented the Philip Morris Company in opposing SB 100. The Philip Morris Company is in agreement that the current statute is adequate. The Department of Administration should be looking at an adequate ventilation and air recirculation system.

Mark Staples, represented the Montana Candy and Tobacco Wholesalers Association. One of the main products at the wholesale and retail level in Montana are tobacco products. The obligation to provide a smoking place is eliminated in the buildings that do not have a place to smoke. The capitol does not have a room for smokers except for the second floor men's bathroom. The statute works fine and total discretion in the agency head could lead to personal prejudices.

Questions From Committee Members and Responses:

Sen. Pipinich asked Debra Fulton if she knew the history of the tobacco tax. Ms. Fulton said she did not.

Sen. Pipinich said the tobacco tax built half of the buildings in Helena. He said it also paid for the veterans of the Second World War and the Korean War. He said the tobacco tax brings in around \$21 million a year and if you do not provide a smoking area you will not receive any tobacco tax revenue. He is against this bill unless you change the word "may" to "must" on line 17.

Ms. Fulton declined to make those changes. If the committee wishes to make those changes rather than kill the bill entirely,

the bill would be better with the other changes that they would have made. To put "must" does not protect non-smokers. On the second page of the bill it says you may not smoke, (it is prohibited to smoke in corridors), on page three it says unless there is no place else to smoke and then you may. The current bill says "must" and the department would resist this change.

Sen. Pipinich asked Ms. Fulton if she felt she was discriminating against a lot of people and what would happen if a discrimination charge was brought against the State of Montana. Ms. Fulton said she is only a building facilities manager.

Sen. Pipinich said he would support the bill if the word "may" and "must" were changed.

Mr. Anderson said the existing statute provides that an agency head shall establish at least one designated smoking area in each building except for those areas listed in subsection 1. In order to to it, the designated smoking area must be suited by architectural design and functional purpose to be used as a smoking area.

Sen. Pipinich said the Department of Administration is forcing a fire hazard. He stated "you are forcing the men and women to go to the second floor in the two lavatories to smoke. So to put the cigarette out you throw it in the paper bin. As in the Capitol building in Idaho, an area for fire hazard is created." Ms. Fulton said she did not designate the smoking area in the Capitol building. Those rooms do not meet the definition of designated smoking areas.

Sen. Pipinich said designated smoking areas and designated non smoking areas are needed. He wants the same consideration that non-smoking people have.

Sen. McClernan asked Mr. Niss if this bill applies to buildings of the University System. Mr. Niss said it would appear to.

Sen. McClernan asked Ms. Fulton if, on the bottom of page one, designated smoking area means an enclosed area, why doesn't it say "room". Ms. Fulton said the area should be enclosed; anything that maintains negative pressure is sufficient.

Sen. McClernan asked Ms. Fulton about the corridor in her building. Ms. Fulton said it was an example of the confusion that exists. In one section of the statute it says that you may not designate a corridor, and then it says anything you designate has to be suited by architectural design and functional purposes. No one knows what that means. Then it goes on to say a corridor may be designated if you cannot find any place else. No corridor is architectural suited by design or functional purpose. So that is the dilemma that exists in trying to protect nonsmokers.

Sen. Hockett asked Ms. Fulton about the cost of implementing SB 100. Ms. Fulton said she did not know what the cost would be--it could be from \$500 to \$6000 per room, depending on the changes that would have to be made. She explained it was entirely appropriate to recirculate air. All the air handling systems are maintained by Johnson Controls, professional contractor. All federal standards are met and there are no "sick" buildings.

Sen. Weldon said he respectfully disagrees with Sen. Pipinich and does appreciate the effort to make work places more comfortable and more healthy. He asked about how state buildings, which are used by more than one agency, would decide which agency head would make the decision about the smoking areas. Ms. Fulton said the agencies would have to agree.

Sen. Weldon said there was some concern that an agency head who did not smoke might discriminate against employees who would like to smoke. Ms. Fulton said an agency head may always act discriminately but the current bill gives the agency head no discretion. An example is the Labor and Industry building. That cafeteria does not meet the current statute and if this statute were to pass there are a large number of smokers in that cafeteria, and she does not think Laurie Ekanger would shut off smoking in that building. What she would probably do is have a wall built and shut off the return air supply and ensure adequate ventilation.

Closing by Sponsor:

Sen. Forrester said he would challenge Sen. Pipinich on the amount of revenue that has been put into the state. In the capitol complex alone there are some significant historical items that cigarette smoke may damage. He used the Russell painting in the House of Representatives as an example. Since this bill has been put forth by the Department of Administration, cigarette smoke has been designated as class A air. EPA recognizes cigarette smoke as class A air. If the existing law is not changed the state may be sued in future years by people inhaling second-hand smoke. If the committee feels SB 100 cannot pass without the changes Sen. Pipinich alluded to, placing the "must" rather than "shall", he would go along with that.

Sen. Pipinich said the bill has some defects and has some merits if the two words are changed; "must" instead of "may" on line 17 and 50.

There was some discussion on assignments of Governor's appointment investigations.

TESTIMONY
GENERAL SERVICES DIVISION
SB 100

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 1-13-93

BILL NO. SB 100

TITLE: "An act defining the term "designated smoking area"; restricting all smoking areas to designated smoking areas; changing from mandatory to discretionary the establishment of designated smoking areas; revising the responsibility for designated smoking areas and placing signs; and amending sections 50-40-203, 50-40-204, and 50-40-205, MCA."

The Department of Administration has requested this bill to ensure compliance with the public policy act adopted by the 1991 legislature regarding non-smokers' exposure to passive smoke inhalation. The existing statute has caused some confusion, and we believe that these amendments will clarify the direction of the statute, and ensure consistent application of the policy.

Section 1 of the bill defines "designated smoking area" as:

"... an enclosed area that maintains negative pressure in relation to surrounding areas and that exhausts all return air to the outside of the building."

When asked, this has been the department's response to agencies. Coincidentally, it is also the definition used in the 1992 publication from the RJ Reynolds Tobacco Company, DEVELOPING A SMOKING LOUNGE, Practical, Cost-Effective Ways to Accommodate Smokers. All this really means is that no smoke contaminated air should be able to filter back into the building from the designated smoking area, and that none of the air in the room should be recirculated by a central ventilating system.

Frequently, agency heads designate smoking areas without consulting the department. These designated areas seldom meet the technical requirements of the act. They result in segregating smokers, but not in protecting non-smokers. We believe this definition will give agency heads clear direction even in the absence of consultation with the department.

Section 2 of the act adds the phrase "or occupied" to the statute to clarify that all state offices are subject to the act. State employees in leased facilities are entitled to protection under the act as surly as those in state owned offices. It also changes the mandate to designate a smoking area to a discretionary action, and removes areas that do not meet the technical definition of a "designated smoking area" from the list of those available to be designated.

Additionally, this section allows the legislature to designate its own smoking areas, irrespective of the public policy for state offices.

Enman #1
1-13-93
SB-100

Section 3 of the bill merely places responsibility for signage with the agency head responsible for the facility. The Department of Administration only has offices in Helena, and it is nearly impossible from a logistic and budgetary standpoint that us to be responsible for signage in all state offices.

The Department of Administration believes that these changes to statute will make the implementation of the act more compliant with the public policy statement, and more consistent in application in state facilities.

Part 2

EXHIBIT NO. 3DATE 1-13-93

Government Offices and Work Areas

BILL NO. SB 100

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings. In offices and work areas in buildings maintained by a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area.

History: En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989; amd. Sec. 6, Ch. 539, L. 1991.

Compiler's Comments

1991 Amendment: In two places, before reference to political subdivision, deleted ref-

erence to state; and made minor changes in style. Amendment effective May 1, 1991.

50-40-202. Public policy. In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that all buildings maintained by the state are to be smoke-free.

History: En. Sec. 1, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991, provided: "[This act] is effective May 1, 1991."

50-40-203. Definitions. As used in 50-40-202 through 50-40-205, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Smoking" means any lighted cigar, cigarette, or pipe or any other lighted tobacco product.

History: En. Sec. 2, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991, provided: "[This act] is effective May 1, 1991."

50-40-204. Smoke-free buildings — designated smoking areas. (1) In buildings maintained by the state, smoking is prohibited in the following areas:

- (a) general office space;
- (b) auditoriums, classrooms, and conference rooms;
- (c) elevators;
- (d) corridors, lobbies, restrooms, and stairways, except as provided in sections (2)(b) and (4);
- (e) medical care facilities;
- (f) libraries; and

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 1-13-93

BILL NO. SB100

NETWORK

BOUNDLESS FOE

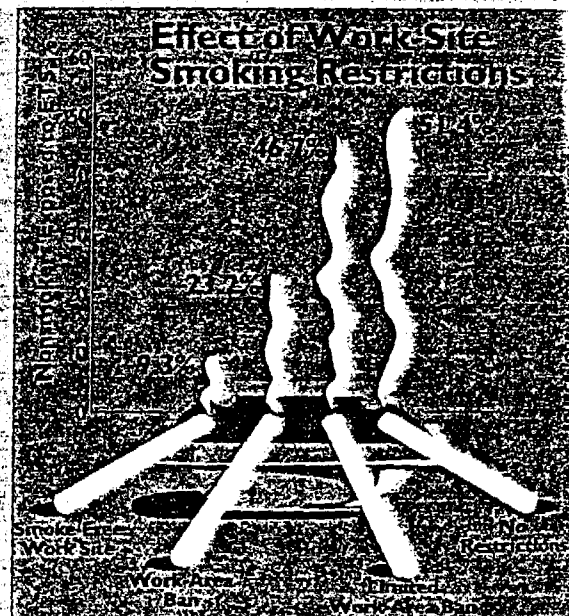
LIMITED SMOKING RESTRICTIONS FAIL AS PROTECTIVE MEASURES

Smoking should not only be restricted in the workplace, it should be eliminated, according to a recent study.

A team of researchers reported in an issue of JAMA, the Journal of the American Medical Association, that a significant number of workers are subjected to environmental tobacco smoke (ETS) despite attempts to restrict smoking to specific areas.

In a survey commissioned by the State of California, 23.2 percent of nonsmokers who worked indoors reported ETS exposure where there was a complete work-area ban. Only 9.3 percent of nonsmokers were exposed to ETS where the entire work site was smoke-free. Almost half of the nonsmokers, however, were exposed to ETS where there was only a limited ban for the work area.

Research has shown that ETS increases the nonsmoker's risk of getting both lung cancer and heart disease. An Environmental Protection Agency draft report in 1990 identified ETS as a Class A known human carcinogen, the authors of the study report, placing it with the likes of asbestos.



DATE 1-13-93

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: HB 60, SB 100

Name	Representing	Bill No.	Check One	
			Support	Oppose
<u>Norm Anderson</u>	<u>The Tobacco Inst</u>	<u>SB 100</u>		☒
<u>Debra Fulton</u>	<u>Dept of Adm</u>	<u>SB 100</u> <u>HB 60</u>	☒	
<u>Marta Chapman</u>	<u>Lincoln County Libraries</u>			
<u>Corrie Huntington</u>	<u>MT University System</u>	<u>SB 100</u>	☒	
<u>Pam McNabb</u>	<u>MT. Technical Council</u>	<u>SB 100</u>		
<u>Mary Hudspeck</u>	<u>Lincoln Co. Supt of Schools</u>	<u>SB 100</u>		
<u>John Williams</u>	<u>Phil Morris</u>	<u>SB 100</u>		☒

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

political committees that participated in that issue. The one that is selected at random would not bear the entire cost. Sen. Weldon asked if the second amendment by Sen. Bianchi had something to do with the same section. Mr. Petesch said Sen. Bianchi's second set of amendments would limit the applicability of the bill to only statewide ballot issues. It would exclude school bond elections, any local referendum election, any of the things that are required to be put on the ballot also. The .02% would pay for the cost of the audit. That amount was calculated to pay for the cost of the audit. All committees that participated in the election would be required to contribute.

Motion/Vote: Sen. Pipinich moved the amendment sb017601.agp. The motion carried.

Discussion: Sen. Weldon asked Sen. Bianchi to explain his amendment, sb017602.agp. Sen. Bianchi said his intent was to cover what he thought were initiative which were basically statewide but when he got the fiscal note they were talking about 400 school bond elections. That was not the intent of the bill. Mr. Petesch explained the fiscal note. There was additional discussion on the amendment. Sen. Pipinich asked to hold this amendment until Sen. Weldon's amendments were reviewed.

Sen. Weldon explained his amendment sb017602.adn. His amendment attempted to address the newspapers concerns. The newspapers were concerned about their potential liability.

Motion/Vote: Sen. Weldon moved the amendment sb017602.adn. The motion carried.

Motion/Vote: Sen. Pipinich moved SB 176 be tabled as amended. Motion carried 7 to 3 with Sen. Fritz, Sen. Burnett, and Sen. McClernan voting no.

EXECUTIVE ACTION ON SB 100

Motion/Vote: Sen. Pipinich moved the amendment sb010001.adn. The motion failed 6 to 2 with Sen. McClernan and Sen. Pipinich voting yes.

Motion/Vote: Sen. McClernan moved the amendment sb010002.adn. The motion carried 7 to 1 with Sen. Fritz voting no.

Motion/Vote: Sen. Pipinich moved SB 100 DO NOT PASS as amended. The motion failed with Sen. Pipinich voting yes.

Motion/Vote: Sen. Weldon moved SB 100 DO PASS as amended. Sen. Tveit made a substitute motion SB 100 be tabled as amended. Sen. Tveit's motion failed with Sen. Pipinich, Sen. Swift and Sen. Tveit voting yes. Sen. Weldon's motion carried with Sen. Pipinich, Sen. Swift, and Sen. Tveit voting no.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 100 (first reading copy -- white), respectfully report that Senate Bill No. 100 be amended as follows and as so amended do pass.

Signed: Senator Eleanor Vaughn
Senator Eleanor Vaughn, Chair

That such amendments read:

1. Page 1, line 25.

Following: "enclosed"

Insert: ", comfortable"

2. Page 2, line 17..

Following: "may"

Insert: ", after consulting with affected employees,"

-END-

ROLL CALL VOTE

SENATE COMMITTEE State Administration BILL NO. SB 100

DATE 2-5-93 TIME A.M. P.M.

NAME

YES NO

[illegible]

Debbie Stanton
SECRETARY

Senator Vaughn
CHAIR

MOTION: SB 100 DO PASS

ROLL CALL VOTE

SENATE COMMITTEE State Administration

BILL NO. SB 100

DATE 2-5-93 TIME _____ A.M. P.M.

NAME _____

YES NO

[illegible]

Debbie Stanton
SECRETARY

Senator Vanecko
CHAIR

MOTION: SB 100 BE AMENDED

ROLL CALL VOTE

SENATE COMMITTEE

State Administration

BILL NO. SB 100

DATE 2-8-93

TIME

A.M. P.M.

YES

NO

[illegible]

Debbie Stanton
SECRETARY

Senator Vucich
CHAIR

MOTION: SB 100 Amendment

56010001.adm

Amendments to Senate Bill No. 100
First Reading Copy

Requested by Sen. McClernan
For the Committee on State Administration

Prepared by David S. Niss
February 4, 1993

1. Page 1, line 25.
Following: "enclosed"
Insert: ", comfortable"

2. Page 2, line 17..
Following: "may"
Insert: ", after consulting with affected employees,"

Informational Testimony:

Sheri Heffelfinger, Legislative Council, distributed a bill summary and a list of documents affected by the bill. EXHIBIT 1

Larry Finch, Office of Research and Information, Department of Revenue, proposed amendments to SB 384 to eliminate the requirement for the biennial report for improvements in the state tax system and for the revenue estimate report. EXHIBIT 2

Bob Person, Executive Director, Legislative Council, stated the Legislative Council had recommended SB 384. He stated the bill simplified and reduced the number of required reports to the legislature. He explained some reports were identified as obsolete and eliminated by the bill; other reports were made discretionary; only reports considered essential to the legislature were retained in the bill. He noted all reports were available, but the bill removed distribution requirements.

Questions From Committee Members and Responses:

REP. SIMPKINS asked Mr. Person whether amendments proposed by the Department of Revenue would inhibit the revenue-estimating process. Mr. Person responded the amendments would not inhibit the function.

REP. SIMPKINS asked Mr. Finch whether the governor's office had approved the amendments. Mr. Finch responded the Budget Office prepares the revenue estimate report, and the Department of Revenue would provide whatever information they needed for the report.

Closing by Sponsor:

SEN. LYNCH thanked the committee.

HEARING ON SB 100Opening Statement by Sponsor:

SEN. GARY FORRESTER, Senate District 49, Billings, introduced SB 100 by request of the Department of Administration to define the term "designated smoking area"; restrict all smoking in state buildings to designated smoking areas; change from mandatory to discretionary the establishment of designated smoking areas; and revise responsibility for designating smoking areas and placing signs.

Proponents' Testimony:

Deborah Fulton, Administrator, General Services Division, Department of Administration, stated the division was responsible for administering buildings in the Capitol complex and approving

leases for all state agencies. She provided written testimony in which she explained the confusion caused by current statutes related to smoking areas and described the provisions of SB 100. She proposed an amendment to remove an exception to areas in which smoking is prohibited. She also distributed information from the Department of Health and Environmental Sciences on the prevalence of cigarette smoking in Montana and the effects of smoking. EXHIBITS 3, 4, 5

Brett Dahl, Administrator, Risk Management and Tort Defense Division, Department of Administration, explained the division provides risk management services to 58 state agencies. He said one of the primary objectives of the program is to promote work place safety for state employees. He described SB 100 as an important state safety measure because it protects employees from the detrimental effects of second-hand smoke. He said there was some concern nationally among risk management professionals about the possibility of litigation because of exposure to cigarette smoke. He reported workers' compensation had not yet received a claim from a state employee alleging injury from smoke. He noted, however, the issue was becoming more visible, and lawsuits by individuals alleging injury from tobacco smoke were now pending before the U.S. Supreme Court. He stated fear of litigation was not a sufficient reason for supporting the bill. Mr. Dahl asked the committee to support SB 100 because it promotes work place safety and protects nonsmokers.

Will Selser, Deputy Director, Lewis and Clark City-County Health Department, and representing local health officers, supported SB 100 only as a stop-gap measure against SB 213. He stated health officers adamantly opposed smoking areas in all public buildings.

Beda Lovitt, Montana Medical Association, stated the Association's opposition to smoking because of its health-related effects and supported SB 100.

David Evenson, Montana University System, reminded the committee the university system has over 400 buildings throughout Montana ranging from residence halls to field houses. He said smoking issues in public buildings were difficult to resolve, and urged support of SB 100 because it was helpful.

REP. SIMPKINS introduced a letter from the Board of County Commissioners, Missoula County, asking SB 100 be amended to include local government buildings. EXHIBIT 6

Opponents' Testimony:

Jerome Anderson, Tobacco Institute, provided written testimony in opposition to SB 100 in which he stated the intent of the legislation was to allow an agency head to completely ban or prohibit smoking of any tobacco products in buildings maintained or occupied by the state. EXHIBIT 7

John Delano, Philip Morris Company, stated SB 100 was not necessary. He alleged the problem in most state buildings was the ventilation system and contended the Department of Administration should be addressing the air circulation systems. He distributed articles challenging the studies and conclusions of the Environmental Protection Agency (EPA) with regard to the hazards of cigarette smoke. EXHIBIT 8

SEN. BOB PIPINICH, Senate District 33, Missoula, stated his opposition to SB 100 and support of SB 213.

Informational Testimony:

Questions From Committee Members and Responses:

REP. RICE asked Mr. Anderson whether he had testified that tobacco smoke was not an air pollutant. Mr. Anderson responded he had stated there were many air pollutants including tobacco smoke.

REP. SPRING referred SEN. FORRESTER to lines 16-17, page 3, and asked what areas of the Capitol were not used by the legislature. SEN. FORRESTER responded the legislature could use any part of the Capitol it wished; he explained the section exempts the Capitol building from the provisions of the bill.

REP. MOLNAR asked SEN. FORRESTER to explain the reason for capitalizing "comfortable" in line 1, page 2, and to define "comfortable". SEN. FORRESTER said he was not sure whether "comfortable" was defined in statute. He explained the intent was to prevent the use of a punishment-type area, such as a closet with a wooden bench, as a designated smoking area.

REP. MOLNAR asked SEN. FORRESTER whether negative air pressure would be achieved by a fan in the room at the back of the House chamber. SEN. FORRESTER said he doubted using a fan would be considered maintaining negative air pressure. REP. MOLNAR asked SEN. FORRESTER to estimate the cost of achieving negative air pressure in state buildings. SEN. FORRESTER contended negative air pressure could be maintained in the room by closing the door. He said maintaining negative air pressure in the House chamber would be expensive.

REP. RICE stated current law requires designated smoking areas and SB 100 makes the areas optional and asked Ms. Fulton whether the bill was less expensive than current statute. Ms. Fulton responded if the interpretation of current statute is to require smoking areas, then SB 100 is less expensive.

REP. SIMPKINS asked Ms. Fulton whether the ideal solution was to declare smokers handicapped and require facilities to accommodate them. Ms. Fulton said she was not qualified to answer the question. Ms. Lovitt stated, as an attorney, she would consider the suggestion to be extreme.

REP. SIMPKINS asked Ms. Fulton whether negative air pressure precludes the use of sophisticated air filtration devices. Ms. Fulton agreed those systems were ineffective in protecting nonsmokers from the effects of second-hand smoke. She said negative air pressure was not as onerous as it sounded; she explained negative air pressure could be determined by watching the direction of a flame on a candle placed in front of the door to a room.

Closing by Sponsor:

SEN. FORRESTER responded to several of the points presented during testimony. He referred to Mr. Anderson's comparison of sick building syndrome and Class A carcinogens. He said the EPA has classified second-hand smoke as a Class A carcinogen, and he knew of no information to indicate that EPA would change their decision. He contended Montana Senators and Representatives could not ignore the liability issues and needed to protect state employees. He emphasized the bill did not ban the use of tobacco products. He agreed the main change in the bill to make the establishment of designated smoking areas discretionary. He pointed out, however that the Senate State Administration committee had amended the bill to require consultation with affected employees. He asked for the committee's concurrence.

HEARING ON SB 213

Opening Statement by Sponsor:

SEN. BOB PIPINICH, Senate District 33, Missoula, introduced SB 213 which provides that revenue from taxes on cigarettes and other tobacco products not be used to construct or maintain buildings unless a comfortable designated smoking area is provided. He described SB 213 as a fairness bill. He reported he had received 25 letters and phone calls in support of the bill from state employees who were afraid of losing their jobs by coming forward publicly. He recounted the electorate had voted not to increase tobacco taxes two years ago, and he read a quote from REP. TOM ZOOK lamenting the lack of smoking areas in the Capitol. He maintained the bill provided guidelines for the future.

Proponents' Testimony:

Jerome Anderson, Tobacco Institute, reported the tobacco industry had not requested SB 213. He said the use of tobacco products had produced \$288 million in tax revenues since 1965 which had been used for the long-range building program. He suggested that if the revenue was used for constructing and maintaining buildings, then in all fairness and equity some reasonable accommodation to smokers should be made. He urged support of the bill.

TESTIMONY
GENERAL SERVICES DIVISION
SB 100

TITLE: "An act defining the term "designated smoking area"; restricting all smoking areas to designated smoking areas; changing from mandatory to discretionary the establishment of designated smoking areas; revising the responsibility for designated smoking areas and placing signs; and amending sections 50-40-203, 50-40-204, and 50-40-205, MCA."

The Department of Administration has requested this bill to ensure compliance with the public policy act adopted by the 1991 legislature regarding non-smokers' exposure to passive smoke inhalation. The existing statute has caused some confusion, and we believe that these amendments will clarify the direction of the statute, and ensure consistent application of the policy.

Section 1 of the bill defines "designated smoking area" as:

"... an enclosed area that maintains negative pressure in relation to surrounding areas and that exhausts all return air to the outside of the building."

When asked, this has been the department's response to agencies. Coincidentally, it is also the definition used in the 1992 publication from the RJ Reynolds Tobacco Company, DEVELOPING A SMOKING LOUNGE, Practical, Cost-Effective Ways to Accommodate Smokers. All this really means is that no smoke contaminated air should be able to filter back into the building from the designated smoking area, and that none of the air in the room should be recirculated by a central ventilating system.

Frequently, agency heads designate smoking areas without consulting the department. These designated areas seldom meet the technical requirements of the act. They result in segregating smokers, but not in protecting non-smokers. We believe this definition will give agency heads clear direction even in the absence of consultation with the department.

Section 2 of the act adds the phrase "or occupied" to the statute to clarify that all state offices are subject to the act. State employees in leased facilities are entitled to protection under the act as surly as those in state owned offices. It also changes the mandate to designate a smoking area to a discretionary action and removes areas that do not meet the technical definition of a "designated smoking area" from the list of those available to be designated.

Additionally, this section allows the legislature to designate its own smoking areas, irrespective of the public policy for state offices.

EXHIBIT 3
DATE 3/11/93

Section 3 of the bill merely places responsibility for signage with the agency head responsible for the facility. The Department of Administration only has offices in Helena, and it is nearly impossible from a logistic and budgetary standpoint that us to be responsible for signage in all state offices.

The Department of Administration believes that these changes to statute will make the implementation of the act more compliant with the public policy statement, and more consistent in application in state facilities.

Amendment to Senate Bill No. 100

Requested by the Department of Administration

1. Page 2, line 13

Delete: "except as provided in subsections (2) and (4)"

EXHIBIT 4
DATE 3/11/83
HB SB100

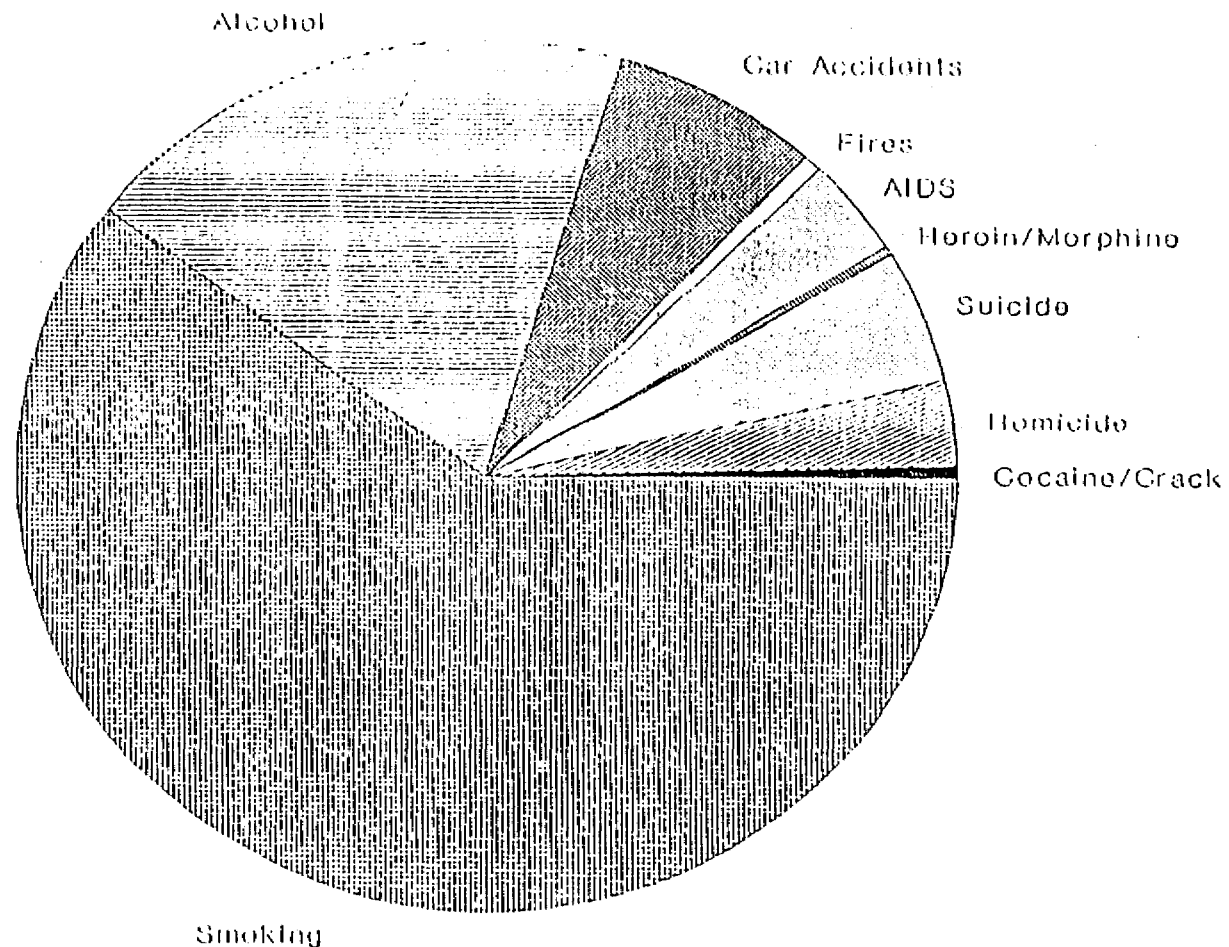
**Smoking Prevalence in Montana By Year - Adults Aged 18 & Over
1984 - 1991**

The following data have been gathered through the use of the Behavioral Risk Factor Surveillance System (BRFSS). The BRFSS is a monthly, randomized telephone survey of 99 Montana adults operated by the Department of Health & Environmental Sciences in cooperation with the Centers for Disease Control, Atlanta, Georgia. Yearly survey results are tabulated from a total of 1188 responses. BRFSS data have been gathered since 1984 regarding the prevalence of cigarette smoking in Montana.

<u>YEAR</u>	<u>% MALE SMOKERS</u>	<u>% FEMALE SMOKERS</u>	<u>% OF TOTAL POPULATION</u>
1984	29.5%	28.2%	28.9%
1985	24.3%	24.8%	24.6%
1986	23.4%	22.6%	23.0%
1987	21.3%	23.2%	22.3%
1988	20.7%	18.7%	19.7%
1989	19.7%	19.2%	19.5%
1990	17.3%	21.4%	19.4%
1991	20.9%	21.0%	21.0%
1992	* Data have not been tabulated at this time		

EXHIBIT 5
DATE 3/11/93

Smoking Kills More Americans Annually Than All of These COMBINED



APPROXIMATE NUMBER OF DEATHS:

Smoking	390,000 ¹
Alcohol (including drunk driving)	125,000 ²
Car Accidents (including drunk driving)	47,000 ³
Fires	4,000 ⁴
AIDS	23,000 ⁴
Heroin/Morphine	2,400 ⁵
Suicide	31,000 ⁵
Homicide	21,000 ⁵
Cocaine/Crack	3,300 ⁵

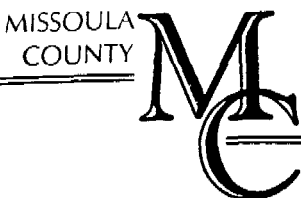
¹1989 Surgeon General's Report, 1985 data

²Surgeon General's Office, 1985 data

³National Safety Council, 1989 data

⁴Centers for Disease Control, 1989 data

⁵National Center for Health Statistics, 1987 data



BCC-93-132
March 4, 1993

(406) 721-5700

Representative Richard Simpkins
Chair, House State Administration Committee
State Capitol
Helena, MT 59620

Dear Representative Simpkins,

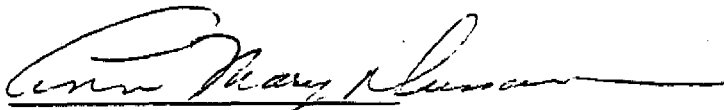
We are writing to you and your committee relative to SB 100, which clarifies designated smoking areas in buildings maintained by the State. This bill is scheduled for a hearing before your committee on March 11.

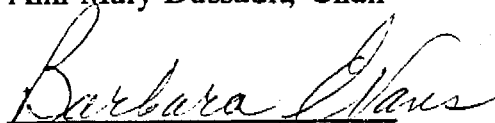
Missoula County would like to see the bill amended to include local government buildings (50-40-201). If this bill would include discretion by local government, we could make decisions on this subject with less apparent conflict between the statutes which require smoking areas and the statutes (MT Safety Act) and laws (ADA) and union agreements requiring us to provide a safe and healthy work environment.

The EPA report and other evidence suggests that there is a threat to the health of non-smokers who are subjected to environmental tobacco smoke. We have been wrestling with this issue for some time in Missoula County, and an amendment to this bill to include local government buildings would be very helpful.

Sincerely,

BOARD OF COUNTY COMMISSIONERS


Ann Mary Dussault, Chair


Barbara Evans, Commissioner


Fern Hart, Commissioner

BCC/SS:ss
cc: Hal Luttschwager, Risk Manager

EXHIBIT 6
DATE 3/11/93
HB SB 100

COMMENTS IN OPPOSITION TO SENATE BILL 100

The effect of Senate Bill 100 is to allow an agency head, on his own volition, to completely ban or prohibit smoking of any tobacco products in buildings maintained or occupied by the State.

Present law requires an agency head "to establish at least one 'designated smoking area' in each building . . . suited by architectural design and functional purpose to be used as a smoking area" (Section 50-40-204(2) MCA.)

Present law prohibits smoking in State buildings in the following areas:

- (a) General office space;
- (b) Auditoriums, classrooms, and conference rooms;
- (c) Elevators;
- (d) Corridors, lobbies, restrooms, and stairways, except that an agency head may designate a corridor, lobby, or restroom as a smoking area where it is not possible to designate another smoking area (Section 50-40-204(1), (2)(b) MCA).

Thus, smoking is now prohibited in virtually all areas of buildings maintained by the State, but the present law does make some provision for those who use tobacco products.

The Department of Administration argues that there are some buildings where separate smoking facilities cannot be established and thus, an agency head should have sole discretion as to the establishment of such areas.

This argument is a fallacy.

Present law only requires the establishment of separate smoking facilities in areas "suited by architectural design and functional purpose." Section 50-40-203(3) MCA.

Thus, if a building is not suited by design to accommodate a separate smoking area, the agency head is not required to establish such an area.

It is clear that the Department of Administration desires to ban smoking in all buildings maintained or occupied by the State of Montana and thus, to discriminate against the rights of a significant segment of State employees as well as the general public.

Concern has been evidenced about the effect of Environmental Tobacco Smoke.

Actually, public concern about proper ventilation in buildings has increased exponentially in the past few years. This concern not only reaches environmental tobacco smoke, but it also reaches the many other air pollutants found in indoor air. These pollutants are things such as:

- Formaldehyde from furniture and wallboards;
- Carbon monoxide and nitrogen dioxide from heating systems;
- Ozone from office copiers;
- Fungal and bacterial spores;
- Cotton fibers and fiberglass fragments.

EXHIBIT 7
DATE 3/11/93
HB SB 100

These substances and others are allowed to accumulate because of inadequate or inadequately maintained ventilation systems and are far and away the predominate causes of the "sick building syndrome" which effect occupants of such buildings and is often wrongfully blamed upon environmental tobacco smoke.

The symptoms of the "sick building syndrome" which are experienced by occupants of such buildings are sore eyes, dry throats, nose irritation, fatigue, coughing, itching skin, nausea, headaches, and respiratory problems. If you give consideration to the ventilation conditions in the State Capitol building and how you feel when you are in this building, you have a substantial understanding of what the "sick building syndrome" constitutes.

The National Institute for Occupational Safety and Health in the United States says that only two percent of the buildings inspected in response to complaints about poor indoor air quality involved excessive levels of tobacco smoke. The principle pollutants which were causing the difficulties are pollutants such as those mentioned above.

When employees wake up and find out what health problems they face in State buildings because of inadequate ventilation and poor building maintenance, the State could face potential liability claims that are totally unrelated to environmental tobacco smoke. Thus, we suggest that the emphasis of the Department of Administration in Montana should be directed toward solving the ventilation problems in various State buildings rather than trying to seek out one element of its State employees and pointing the finger of blame upon them.

All we ask for is an accommodation for our tobacco users. Accommodations are prepared for others. Why not for a substantial percentage of the State work force as well as members of the public?

We build and maintain the involved State buildings. Since 1985, over \$288 million has been paid into the Long-Range Building Program by users of tobacco products for construction and maintenance of State buildings.

It is ridiculous and hypocritical to ban the use of a legal product within the very facilities that have been paid for by those who use the product.

Please vote against Senate Bill 100.

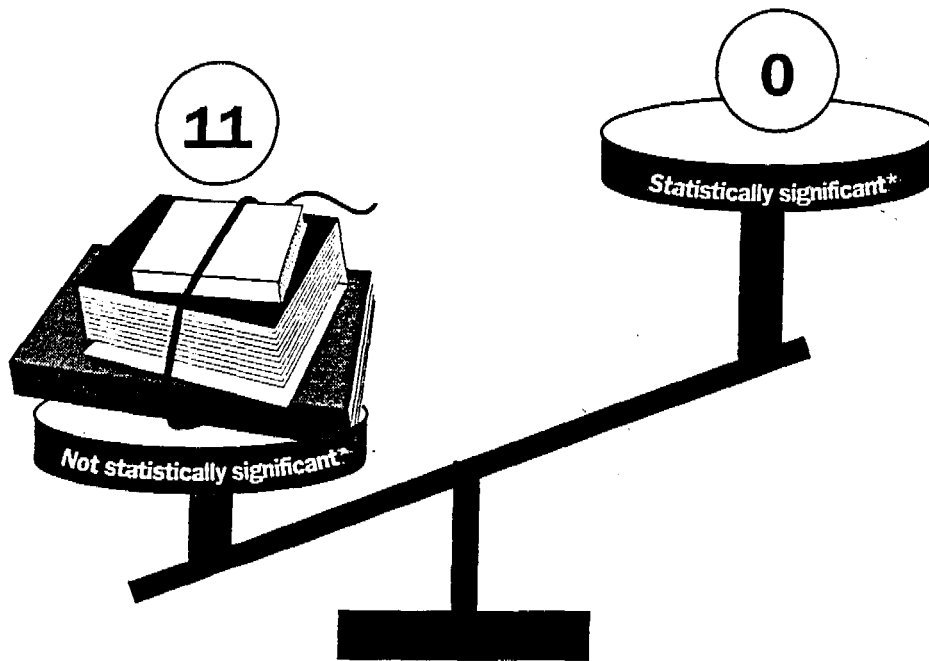
Respectfully presented,

A handwritten signature in black ink, appearing to read "Jerome Anderson", followed by a long horizontal line.

Jerome Anderson
Representative of the Tobacco Institute

FASTFACTS

Weighing the Data on Environmental Tobacco Smoke (ETS)



*Of the 11 U.S. studies that the EPA combined to determine relative risk of exposure to ETS, not one originally reported an overall statistically significant increased risk of lung cancer.

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EXHIBIT 8
DATE 3/11/93
HB SB 100

OPINION

Blowing Smoke in the Face of Science

by Matthew C. Hoffman

On Jan. 7, 1993, the U.S. Environmental Protection Agency (EPA), announced the long-awaited results of its four-year study on the health effects of exposure to environmental tobacco smoke (ETS), better known as "secondhand smoke." With all the rhetoric that normally accompanies government pronouncements, the EPA called the results "absolutely unassailable from a scientific point of view." Not only does secondhand smoke cause cancer, proclaimed the EPA, it kills thousands every year.

Most Americans, including myself, don't smoke, and we tend to tolerate measures that limit smoking. But the EPA's peremptory attitude notwithstanding, its study is hardly "unassailable." In fact, it appears that the EPA lowered its scientific standards to reach a politically desirable conclusion. The implications for both smokers and nonsmokers could be devastating. Instead of collecting new data for its study, the EPA relied on "meta-analysis," a technique that is controversial among scientists because of its potential for abuse. A meta-analysis pools the data from many smaller studies and reanalyzes. Researchers who selectively incorporate studies or fail to account for differences among the studies will achieve biased results.

The studies that the EPA incorporated into its meta-analysis were not based on controlled, laboratory experiments. Instead, the studies used were surveys (some of them telephone polls) that asked general questions about exposure to ETS — sometimes requiring respondents to recall decades of experience. Significantly, two-thirds of the studies used by the EPA reported no connection between ETS exposure and lung cancer. Worse, the EPA weakened a crucial scientific standard when it lowered the "confidence interval" (which is used to interpret the results of a study) from 95 percent to 90 percent. If the EPA's analysis had employed a 95 percent confidence interval, as most of the studies it incorporated did, it would have found no overall statistically significant connection between ETS and lung cancer!

The EPA's disregard for scientific standards threatens to open up homes and offices to costly and intrusive regulations, and creates a precedent that might be used to indict other aspects of our living environment. For example, the EPA has investigated electromagnetic fields, which are produced by many household appliances, to determine if they cause cancer. Also under investigation is shower-taking; the EPA apparently fears that carcinogens are released by tap water. If such phenomena are classified as cancer-causing, Americans could find their personal lives and homes regulated by the EPA bureaucracy.

Unfortunately, few voices have risen to challenge the EPA. The tobacco industry's trade association, The Tobacco Institute, has been one of the few dissenting voices in the debate, and for obvious reasons, it has been ignored as a tool of financial interests. However, the EPA should not be treated as an impartial source of scientific truth. With every substance the EPA classifies as cancer-causing, the agency gains power and prestige and opens new possibilities for expanding its activities. If we allow government bureaucracies to distort science for political purposes, what's next on the list?

EPA Under Scrutiny

Poorly managed data and too little research are among the problems facing the U.S. Environmental Protection Agency (EPA), according to a recent report by the U.S. Government Accounting Office (GAO).

The report, which was released in January as part of a series of transition audits produced by the GAO every four years, concluded that significant changes must be made at the EPA before the agency could be elevated to a Cabinet-level department. Among the GAO's recommendations:

- Program priorities should be based on the risk to public health and the environment. The GAO noted that setting priorities based on actual risk could be difficult "as long as public policy and, in particular, the budget allocation process are dominated by

public perceptions of risk rather than by scientific and expert judgment."

- The EPA should rely more on market-based incentives, rather than government regulations, to reduce the costs of complying with environmental standards.
- In order to assess environmental risks, better scientific data should be developed. According to the report, scientific data "often do not exist or, when they are available, are of poor quality or difficult to access and use."
- Alternative financing, technology and managerial approaches should be developed in order to help state and local governments bear the financial burdens placed on them by federal environmental requirements.
- Better accountability is needed to

correct the weaknesses that have "affected the efficiency and effectiveness of virtually all of EPA's programs." For example, the GAO reported that the EPA does not adequately monitor the costs associated with federal contractors.

The GAO found that mismanagement was not unique to the EPA, however. As a Jan. 8 *Newsday* story reported, another GAO study noted that the federal government wastes money in a variety of "big and small ways," ranging from the use of outdated computers — which kept the Internal Revenue Service from collecting up to \$111 billion in overdue taxes — to overpaying for supplies. ■

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Border States Benefit

The recent increase in the consumer excise tax on cigarettes in Massachusetts is expected to mean millions of dollars for store owners and the government coffers — of neighboring New England states!

In November 1992, Massachusetts voters passed a referendum that raised the excise tax on cigarettes from 25 cents per pack to 51 cents per pack. The law, which took effect Jan. 1, 1993, gave Massachusetts the highest cigarette tax in the nation, and put the state at a competitive disadvantage, surrounded by states where cigarette taxes are lower. For example, a pack of premium cigarettes in Massachusetts now costs around \$3, compared to approximately \$2.10 in New Hampshire, according to a Jan. 4 Associated Press (AP) story.

Almost immediately, New Hampshire merchants reported an increase in business, as Massachusetts residents crossed the border to buy cigarettes. Said Plaistow, N.H., store owner John Dipietro in the AP story: "We saw a tremendous response even before the law took effect. On December 21st, we

Rick Christiana, an employee of a Salem, N.H., business establishment, noted, "People are coming in buying 10 to 20 cartons at a time."

Other New England states also hope to benefit from cross-border sales. In a Jan. 27 editorial in the *Providence (R.I.) Journal-Bulletin*, former Rhode Island state Rep. Raymond W. Fogarty observed, "Massachusetts' loss is Rhode Island's gain." According to Fogarty, a study by the accounting firm Peat, Marwick estimates Rhode Island will receive \$10.5 million per year in additional tax revenues thanks to the Massachusetts tax increase. This estimate, however, assumes no further increase in Rhode Island's current 37-cent-per-pack cigarette excise tax, a fact that Fogarty said "should remain foremost in the minds of [Rhode Island] Governor Sundlun and legislators contemplating the 1992-93 budget." And in Connecticut, two measures have been introduced in the state legislature that would lower the tax levied on cigarettes. Connecticut, at 45 cents per pack, has the second highest cigarette

The loss of business has not gone unnoticed by Massachusetts merchants. "We're the laughingstock of the country," said Princeton, Mass., business owner Kevin Gallant in a Jan. 2 (Worcester, Mass.) *Telegram & Gazette* article.

A study released in August 1992 by the American Legislative Exchange Council (ALEC) compared the economic effects of combined state sales and excise tax rates for the six New England states from 1987 to 1991. The study reported that Massachusetts, Connecticut and Maine were the tax revenue and job losers overall because of high cigarette tax rates, while New Hampshire, Rhode Island and Vermont were the overall winners because of lower rates. Combined, the losers suffered erosion of \$107.6 million in tax revenues and 3,037 jobs. The winners gained \$65.7 million in tax revenues and 3,247 jobs.

As ALEC Executive Director Samuel A. Brunelli observed, "States have a real opportunity to gain revenue, business and jobs by keeping these tax rates low." ■

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration COMMITTEE

BILL NO. SB 100

DATE 3/11/93

SPONSOR(S) Sen. Forrester

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>BERNIE ANDERSON</u>	<u>TOBACCO INSTITUTE</u>		☒
<u>Paul Rahl</u>	<u>Dept of Admin</u>	☒	
<u>ROBERT W MOON</u>	<u>MT DEPT OF HEALTH</u>	☒	
<u>JOHN DELANO</u>			☐
<u>Debra Gulton</u>	<u>Dept of Admin</u>	☒	
<u>DAVID EVERSON</u>	<u>U-System</u>	☒	
<u>Beda Horitt</u>	<u>MT. MED. ASSN</u>	☒	
<u>Joan Pierce</u>	<u>Teton County Clerk's Rec</u>		☒
<u>REX MANUEL</u>	<u>Philip Morris</u>	<u>213</u>	

EASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
E AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

and SCHWINDEN voting no and REP. SQUIRES voting by proxy.
EXHIBITS 4, 5

EXECUTIVE ACTION ON SB 100

Discussion:

Ms. Heffelfinger distributed the gray bill for SB 100. She reported an error in the gray bill and asked committee members to strike "except as provided in subsections (2)(b) and (4)" in lines 22-23, page 2. She reviewed the provisions of the bill: (1) defining "smoke-free building"; (2) exempting the Montana university system from the requirements of a designated smoking area; (3) clarifying which buildings must have designated smoking areas; and (4) changing the definition of a designated smoking area. EXHIBIT 6

REP. SIMPKINS asked whether a smoke-free building would be required to have a designated smoking area. Ms. Heffelfinger explained current law is confusing because it says all buildings maintained by the state are to be smoke-free. She recommended amending the policy statement currently in statute clarifying the state's policy.

REP. BARNHART said she was concerned that the general public would interpret a sign which stated a building was smoke-free to mean smoking was not allowed in the building. REP. SIMPKINS said he had anticipated the problem and eliminated the requirement for signs.

Ms. Heffelfinger explained the reason for defining "smoke-free building" was to clarify the discrepancy between the state's public policy, which declares "that all buildings maintained by the state are to be smoke-free," and other provisions which state "an agency head shall establish at least one 'designated smoking area' in each building...". She suggested that by following her recommendation, the public policy intent would be clarified and no definition of smoke-free building would be needed.

REP. RICE asked whether the amendments removed architectural design as a restriction in considering smoking in buildings. Ms. Heffelfinger responded the amendments would require only buildings which are suited by architectural design and functional purpose to have a designated smoking area.

REP. DAVIS asked about the reference to "certain areas of buildings" in the policy statement and asked whether the language should be changed to "certain buildings." Ms. Heffelfinger recommended changing the section to read: "In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that certain buildings both owned and occupied by the state may be smoke-free. It is further the policy of the state that designated smoking

areas be established in certain other state buildings pursuant to 50-40-204." REP. DAVIS agreed the change would be more clear.

REP. BARNHART asked what "smoke-free" would mean. REP. SIMPKINS said "smoke-free" would mean "no smoking."

Ms. Heffelfinger pointed out the gray bill specified the law applied only to state-owned and occupied buildings and exempted the Montana university system as well as buildings which housed items of artistic and historical value which might be damaged by smoke. She noted the gray bill also stipulated that "the legislature shall establish designated smoking areas in the Capitol in areas used by the legislature." She directed the committee's attention to lines 7-17, page 4, which describe the signing requirements for buildings.

Motion: REP. ROSE MOVED SB 100 BE CONCURRED IN.

Motion/Vote: REP. DAVIS moved to amend SB 100. Motion carried unanimously with REP. SQUIRES voting by proxy. EXHIBIT 4

Motion: REP. GALVIN moved to amend SB 100. EXHIBIT 7

Discussion:

REP. GALVIN explained his amendments asked the tobacco industry to donate funds for the designated smoking areas. Ms. Heffelfinger stated the amendments established a special revenue account, authorized the Department of Administration to accept donations, and provided a statutory appropriation to the department to use the funds for designated smoking areas. She said the amendments also waived the requirement for a designated smoking area if the account had insufficient money.

REP. REHBEIN asked whether the amendments made it easier for people to smoke. REP. GALVIN responded no. He said the intent of the amendments was to get the tobacco industry to pay for smoking areas.

REP. BARNHART asked whether other people could donate to the fund. REP. GALVIN responded yes, anyone could donate.

REP. STOVALL asked whether the department would solicit funds from the tobacco industry. REP. GALVIN responded no.

REP. REHBEIN contended the legislature had tried to eliminate smoking as much as possible. He suggested the amendments encouraged smoking by providing funds to state agencies for constructing facilities to accommodate smokers. REP. SIMPKINS said his interpretation of the amendments was that designated smoking areas would not be built unless there were sufficient donations; he contended the amendments nullified the intent of SB 213.

REP. BARNHART asked whether the amendments just established an account or, in fact, were tied to the designated smoking areas. Ms. Heffelfinger responded the fourth amendment waived the requirements of subsection (2)(a) if there was insufficient money to pay the cost of establishing a designated smoking area. She explained the agency head would not be required to provide a designated smoking area if there was not money in the account to pay for it.

REP. SIMPKINS reported the amendment conflicted with SB 213 and would destroy the agreement with SEN. PIPINICH. REP. DAVIS asked whether the amendment would conflict with the gray bill. Ms. Heffelfinger explained the amendment was comparable to changing the "shall" to "may" and giving agency heads the discretion to establish designated smoking areas.

REP. BARNHART asked Ms. Heffelfinger whether the fourth amendment could be eliminated and the provision for accepting donations for designated smoking areas be maintained. Ms. Heffelfinger said her concern was specifying how donated funds would be used.

REP. SIMPKINS asked Deborah Fulton, Administrator, General Services Division, Department of Administration, whether she could accept donations. Ms. Fulton said she probably could accept funds, but she would not have any authority to spend them. She said she admired the intent of the bill, but reported the Department of Administration did not control all state buildings. She said she was unsure how funds would be allocated unless they were designated for specific buildings.

REP. DAVIS asked Ms. Fulton whether the gray bill was acceptable to the department. Ms. Fulton stated the amendments accommodated both SEN. PIPINICH'S and the department's concerns. REP. DAVIS asked Ms. Fulton how REP. GALVIN'S amendments affected the department. Ms. Fulton responded if the fourth amendment were included, then areas of contention would continue to exist. She said the amendments without the fourth amendment might provide additional options because available resources were a concern. She suggested the department could try to implement the new legislation without REP. GALVIN'S amendments, and, if necessary, return in two years to ask for authorization to accept donations.

REP. BARNHART stated allowing donations was appealing to her, and she would support an amendment allowing donations.

REP. GALVIN recommended striking the fourth amendment from his group of amendments; he said the other amendments would enhance the appropriation of funds for building smoking areas.

REP. ROSE asked whether donated funds could be used to improve the designated smoking areas. REP. SIMPKINS suggested the amendment could be changed to include improvements. REP. GALVIN agreed to the change.

Motion/Vote: REP. RICE moved to segregate amendment 4 and accept the other amendments. Motion carried 12 to 3 with REPS. DAVIS, MOLNAR, and HAYNE voting no, REP. GERVAIS voting by proxy, and REP. SQUIRES abstaining. EXHIBIT 8

Motion/Vote: REP. GALVIN MOVED SB 100 BE CONCURRED IN AS AMENDED. Motion carried 11 to 4 with REPS. DAVIS, SPRING, HAYNE, and MOLNAR voting no, REP. GERVAIS voting by proxy, and REP. SQUIRES abstaining. EXHIBIT 8, 9

EXECUTIVE ACTION ON SB 318

Discussion:

REP. ROSE expressed his consternation with the proposal to have 16-year-old youths serving as election judges and asked Joe Kerwin, Election Bureau Chief, Secretary of State's Office, to respond. Mr. Kerwin said the proposal was made in order to increase the pool of individuals available to serve as election judges and to involve youth in the electoral process. REP. ROSE contended Missoula county was the only county having difficulty finding election judges and suggested most county clerks did not want the changes proposed in SB 318. Mr. Kerwin reported many counties had difficulty finding election judges and suggested SB 318 provided options.

REP. SIMPKINS recommended the committee review the provisions of SB 318. REP. MASON expressed his concern with the changes in the qualifications of election judges, specifically allowing non-registered voters and persons under 18 years of age to serve as election judges. REP. MOLNAR described how an inexperienced election judge had caused numerous recounts of ballots and contended election outcomes were too serious to leave to inexperienced people. REP. GALVIN asked REP. MOLNAR the age of the election judge who had caused the recounts. REP. MOLNAR responded age was irrelevant; he was opposed to lowering qualifications for election judges.

REP. BARNHART asked REP. MOLNAR what qualifications, other than being a registered voter, were required in present law. REP. SIMPKINS contended by removing the registered voter requirement, anyone could serve as an election judge. REP. BARNHART maintained being a registered elector did not make an individual better qualified. Mr. Kerwin agreed the bill removed the registered voter requirement in order to allow mature youths under 18 years of age to participate as election judges. REP. SIMPKINS asked whether a convicted felon on parole could serve as an election judge. Mr. Kerwin said under current law they could not serve. He maintained the bill would give the secretary of state rulemaking authority to prescribe qualifications for election judges; therefore, depending upon how rules are written, a convicted felon may or may not be able to serve as an election judge. REP. SIMPKINS differentiated between rules and laws and

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 4

Mr. Speaker: We, the committee on State Administration report that Senate Bill 100 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Simpkins*

Dick Simpkins, Chair

And, that such amendments read:

Carried by: Rep. S. Rice

1. Title, lines 7 and 8.

Strike: "CHANGING" on line 7 through "OF" on line 8

Insert: "EXEMPTING MONTANA UNIVERSITY SYSTEM BUILDINGS AND CERTAIN OTHER BUILDINGS FROM THE REQUIREMENT TO DESIGNATE SMOKING AREAS; CLARIFYING WHICH BUILDINGS MUST HAVE"

2. Title, line 10.

Following: "SECTIONS"

Insert: "17-7-502, 50-40-202,"

3. Page 1.

Following: line 13

Insert:

"NEW SECTION. Section 1. Special revenue account -- donations for smoking areas -- statutory appropriation. (1) There is an account in the state special revenue fund for the establishment of designated smoking areas pursuant to 50-40-204.

(2) The department of administration is authorized to accept donations to pay for the establishment of or improvements to designated smoking areas in state buildings and shall deposit any donations into the special revenue account established in subsection (1).

(3) The money in the special revenue account established in subsection (1) is statutorily appropriated, as provided in 17-7-502, to the department of administration to pay for the establishment of or improvements to designated smoking areas pursuant to 50-40-204.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a

Committee Vote:

Yes 11, No 4.

622116SC.Hgs

Following: line 4

Insert:

"Section 4. Section 50-40-202, MCA, is amended to read:

"50-40-202. Public policy. In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that ~~all~~ certain buildings maintained both owned and occupied by the state are to may be smoke-free. It is further the policy of the state that designated smoking areas be established in certain other state buildings pursuant to 50-40-204."

Renumber: subsequent sections

6. Page 2, line 7.

Strike: "maintained or"

Insert: "both owned and"

7. Page 2, line 12.

Following: "stairways"

Strike: ", "

8. Page 2, line 13.

Strike: "except" through "(4)"

9. Page 2, lines 17 and 18.

Following: "(2)" on line 17

Insert: "(a)"

Strike: "An" through "EMPLOYEES," on line 18

Insert: "Subject to subsection (1), in state-owned buildings, an agency head shall"

10. Page 2, lines 19 and 20.

Strike: "each" on line 19

Insert: "the"

Following: "building" on line 19

Strike: ", except" on line 19 through "(1)," on line 20

Insert: "occupied by the agency, provided that the building is"

11. Page 2, line 21.

Strike: "be used as"

Insert: "have"

12. Page 2.

Following: line 22

Insert: "(b) Buildings in the Montana university system, including the vocational-technical centers, and buildings housing items of artistic or historic value that may be damaged by smoke are exempt from the provisions of

subsection (2)(a)."

13. Page 3, line 16.

Strike: "may"

Insert: "shall"

14. Page 3, lines 19 through 22.

Following: "receptacles." on line 19

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

15. Page 4.

Following: line 6

Insert:

"NEW SECTION. Section 7. Codification instruction.
[Section 1] is intended to be codified as an integral part of
Title 50, chapter 40, part 2, and the provisions of Title 50,
chapter 40, part 2, apply to [section 1]."

53rd Legislature

This is a "Gray Bill". It is not an official version of the bill and is solely for the purposes of showing the House State Administration Committee what Amendments have been requested.

INTRODUCED BY FORRESTER, HARPER, DOWELL
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

1
2
3 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERM
4 "DESIGNATED SMOKING AREA" and "smoke-free building"; RESTRICTING
5 ALL SMOKING AREAS TO DESIGNATED SMOKING AREAS; ~~CHANGING FROM~~
6 ~~MANDATORY TO DISCRETIONARY THE ESTABLISHMENT OF~~ exempting the
7 Montana university system from the requirement to designate
8 smoking areas; clarifying what buildings must have DESIGNATED
9 SMOKING AREAS; REVISING RESPONSIBILITY FOR DESIGNATING SMOKING
10 AREAS AND PLACING SIGNS; AND AMENDING SECTIONS 17-7-502, 50-40-
11 203, 50-40-204, AND 50-40-205, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 Section 1. Section 50-40-203, MCA, is amended to read:

16 "50-40-203. Definitions. As used in 50-40-202 through 50-
17 40-205, the following definitions apply:

18 (1) "Agency head" means a director, commissioner, or
19 constitutional officer in charge of an executive, legislative, or
20 judicial branch agency or of an agency of the Montana university

(g) hazardous areas.

(2) ~~(A) An agency head shall may, AFTER CONSULTING WITH~~
~~AFFECTED EMPLOYEES, EXCEPT AS PROVIDED IN SUBSECTION (2)(B), IN~~
~~STATE-OWNED BUILDINGS, AN AGENCY HEAD SHALL~~ establish at least
 one "designated smoking area" in ~~each~~ THE building, ~~except in~~
~~these areas listed in subsection (1), OCCUPIED BY THE AGENCY,~~
~~PROVIDED THAT THE BUILDING IS~~ suited by architectural design and
 functional purpose to ~~be used as~~ HAVE a designated smoking area
as defined in 50-40-203.

~~(a) An agency head may designate a smoking area in a~~
~~cafeteria. The size of the area must be determined by an estimate~~
~~of the number of smoking and nonsmoking patrons served.~~

~~(b) An agency head may designate a corridor, lobby, or~~
~~restroom as a smoking area when it is not possible to designate~~
~~another smoking area.~~

(B) BUILDINGS IN THE MONTANA UNIVERSITY SYSTEM, INCLUDING
THE VOCATIONAL-TECHNICAL CENTERS, ARE EXEMPT FROM THE PROVISIONS
OF SUBSECTION (2)(A).

(3) In establishing designated smoking areas, as provided
 in subsection (2), an agency head shall consider:

- (a) the number of smokers and nonsmokers in the agency;
- (b) the building ventilation system;
- (c) the availability of space; and
- (d) the protection of nonsmokers from involuntary exposure
to smoke; and

Amendments to Senate Bill No. 100
Third Reading Copy

Requested by Rep. Pat Galvin
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 18, 1993

1. Title, line 10.

Following: "SIGNS;"

Insert: "PROVIDING THAT DESIGNATED SMOKING AREAS ARE NOT REQUIRED
UNLESS PAID FOR BY DONATIONS;"

Following: "SECTIONS;"

Insert: "17-7-502,"

2. Page 1.

Following: line 13

Insert:

"NEW SECTION. Section 1. Special revenue account --
donations for smoking areas -- statutory appropriation. (1)
There is an account in the state special revenue fund for the
establishment of designated smoking areas pursuant to 50-40-204.

(2) The department of administration is authorized to
accept donations to pay for the establishment of designated
smoking areas in state buildings and shall deposit any such
donations into the special revenue account established in
subsection (1).

(3) The money in the special revenue account established in
subsection (1) is statutorily appropriated to the department of
administration to pay for the establishment of designated smoking
areas pursuant to 50-40-204.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an
appropriation made by permanent law that authorizes spending by a
state agency without the need for a biennial legislative
appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective,
a statutory appropriation must comply with both of the following
provisions:

(a) The law containing the statutory authority must be
listed in subsection (3).

(b) The law or portion of the law making a statutory
appropriation must specifically state that a statutory
appropriation is made as provided in this section.

(3) The following laws are the only laws containing
statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203;
10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-
25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101;
16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-

EXHIBIT 7

1

DATE

3/18/93

sb010004.ash

HB

SB 100

3/18/93

I give my power vote to
Rep Davis for all actions
in State Education Council.
This date

Rep Elmore

SB 100 - ^{Supplies} Amend - Yes
" " ^{Balance} Amend - Yes
" " ^{Element} As Amended - Yes

SB 318 omit Sec 4. - No
" " omit Sec 2 - No
" " Sec 3 - No
As Amended - Yes

(11-5)
(7-9) Failed
(9-7) Passed

SB 100 Not Pass - No

EXHIBIT 8
DATE 3/18/93
HB SB100 SB318

Amendments to Senate Bill No. 100
Third Reading Copy

For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 18, 1993

1. Title, lines 7 and 8.

Strike: "CHANGING" on line 7 through "OF" on line 8

Insert: "EXEMPTING MONTANA UNIVERSITY SYSTEM BUILDINGS AND
CERTAIN OTHER BUILDINGS FROM THE REQUIREMENT TO DESIGNATE
SMOKING AREAS; CLARIFYING WHICH BUILDINGS MUST HAVE"

2. Title, line 10.

Following: "SECTIONS"

Insert: "17-7-502, 50-40-202,"

3. Page 1.

Following: line 13

Insert:

"NEW SECTION. Section 1. Special revenue account --
donations for smoking areas -- statutory appropriation. (1)
There is an account in the state special revenue fund for the
establishment of designated smoking areas pursuant to 50-40-204.

(2) The department of administration is authorized to
accept donations to pay for the establishment of or improvements
to designated smoking areas in state buildings and shall deposit
any donations into the special revenue account established in
subsection (1).

(3) The money in the special revenue account established in
subsection (1) is statutorily appropriated, as provided in 17-7-
502, to the department of administration to pay for the
establishment of or improvements to designated smoking areas
pursuant to 50-40-204.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an
appropriation made by permanent law that authorizes spending by a
state agency without the need for a biennial legislative
appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective,
a statutory appropriation must comply with both of the following
provisions:

(a) The law containing the statutory authority must be
listed in subsection (3).

(b) The law or portion of the law making a statutory
appropriation must specifically state that a statutory
appropriation is made as provided in this section.

(3) The following laws are the only laws containing

statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; [section 11]; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Renumber: subsequent sections

4. Page 2, lines 1 through 3.

Strike: "negative" on line 1 through "relation" on line 2

Insert: "adequate ventilation to minimize the circulation of smoke"

Strike: "1" on line 2 through "building," on line 3

5. Page 2.

Following: line 4

Insert:

"Section 4. Section 50-40-202, MCA, is amended to read:

"50-40-202. Public policy. In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that all certain buildings maintained both owned and occupied by the state are to ~~may~~ be smoke-free. It is further the policy of the state that designated smoking areas be established in certain other state buildings pursuant to 50-40-204."

Renumber: subsequent sections

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Strike: "maintained or"

Insert: "both owned and"

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Following: "stairways"
Strike: ", "
8. Page 2, line 13.
Strike: "except" through "(4) "
9. Page 2, lines 17 and 18.
Following: "(2)" on line 17
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Insert: "the"
Following: "building" on line 19
Strike: ", except" on line 19 through "(1)," on line 20
Insert: "occupied by the agency, provided that the building is"
11. Page 2, line 21.
Strike: "be used as"
Insert: "have"
12. Page 2.
Following: line 22
Insert: "(b) Buildings in the Montana university system, including the vocational-technical centers, and buildings housing items of artistic or historic value that may be damaged by smoke are exempt from the provisions of subsection (2)(a)."
13. Page 3, line 16.
Strike: "may"
Insert: "shall"
14. Page 3, lines 19 through 22.
Following: "receptacles." on line 19
Strike: subsection (1) in its entirety
Renumber: subsequent subsections
15. Page 4.
Following: line 6
Insert:

"NEW SECTION. Section 7. {standard} Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 40, part 2, and the provisions of Title 50, chapter 40, part 2, apply to [section 1]."